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11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF WASHINGTON**
AT SPOKANE

13 STATE OF WASHINGTON, *et al.*,

14 Plaintiffs,

15 v.

16 UNITED STATES DEPARTMENT OF
17 HOMELAND SECURITY, *et al.*,

18 Defendants
19
20
21
22

No. 4:19-cv-5210-RMP

REPORT PURSUANT TO MAY 13,
2020 ORDER

1 Defendants respectfully submit this report pursuant to the Court’s May 13, 2020
2 Order Denying in Part and Granting in Part Defendants’ Motion to Stay Discovery Order
3 re: Privilege Log (“Order”). ECF No. 219. The Court ordered Defendants to produce a
4 privilege log pertaining to Defendants’ administrative record on a rolling basis starting
5 on June 12, 2020. *Id.* at 6. The Court further ordered Defendants to make reports to the
6 Court and Plaintiffs every other Friday, on their progress toward completion of the
7 privilege log. *Id.*

8 **Notifying Custodians of Obligation to Preserve Documents**

9 First, the Court ordered Defendants to report on their progress in “notifying
10 potential custodians of their obligation to preserve potentially relevant documents, even
11 if assertedly privileged[.]” Order at 6. As discussed in Defendants’ June 12, 2020 report,
12 Defendants have notified all potential custodians of their obligation to preserve
13 potentially relevant documents, even if assertedly privileged.

14 **Segregating Privileged Documents for Review**

15 Second, the Court ordered Defendants to report on their progress in “segregating
16 all assertedly privileged documents for review.” Order at 6.

17 As reported previously, Defendants believe they have collected all necessary
18 emails and other electronic documents for the privilege review. Although electronic
19 records are expected to constitute the vast majority of documents subject to the Court’s
20 Order, it is possible that there could be paper documents that do not also exist in electronic
21 form. At this time, due to the COVID-19 crisis and the telework status of most agency
22 personnel, Defendants cannot determine whether there are any paper documents that will

1 need to be collected, as those documents are physically located in agency offices and are
2 therefore currently inaccessible.

3 **Logging Privileged Documents**

4 Third, the Court ordered Defendants to report on their progress in logging
5 privileged documents pursuant to Fed. R. Civ. P. 26(b)(5)(A). Order at 6. As of
6 November 13, 2020, 49,439 documents have been batched for review in the DOJ
7 document review platform.¹ 49,362 (*i.e.*, 99.8%) of those documents have undergone an
8 initial review. 6,132 of the documents require final review by agency counsel and, as
9 necessary, by counsel at the Department of Justice. The documents awaiting final level
10 review include many documents that contain third party equities and which Defendants
11 expect to include in future installments of the privilege log after consulting with the
12 appropriate third parties. Similarly, some of the documents that underwent final review
13 since the last status report contain third party equities and require consultation with third
14 parties. 266 documents are currently listed on the privilege log.

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16 Dated: November 13, 2020

Respectfully submitted,

17 JEFFREY BOSSERT CLARK
18 Acting Assistant Attorney General

19 WILLIAM D. HYSLOP
United States Attorney

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21 ¹ Defendants previously reported that 50,152 documents had been batched for review.
22 Defendants have since determined that that count included some documents already
contained in the administrative record and which do not need to be reviewed for the
privilege log.

ALEXANDER K. HAAS
Branch Director

/s/ Joshua M. Kolsky

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all users receiving ECF notices for this case.

/s/ Joshua Kolsky

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